

control to the positions they would have occupied had the senior Welches not violated their contractual obligations by selling their shares to TDS.

Irreparable Harm and Balance of the Equities

Lundgren will be irreparably harmed in the absence of a preliminary injunction. Dilution of the voting power of the stock she intends to buy will nullify any success she might have in the litigation; that is, were she to obtain a judgment requiring return of the senior Welch stock and sale of all the Welch stock to her, she would be unable to buy the stock because her financing is contingent on buying a controlling interest. The injunction was necessary to prevent her prospective victory in the litigation from being an illusory one.

The Welches, VCC and TDS, in contrast, have not shown any irreparable harm flowing from the preliminary injunction. The injunction requires only that the superior court approve corporate decisions taken outside the normal course of business. VCC can seek a modification of the injunction to allow it to pursue particular extraordinary ventures. Appellants have not shown that such an approval process creates an insuperable barrier to the operation of VCC's enterprises. The possibility that Lundgren will be unable to perform and TDS might "walk away from the deal," as appellants suggest, is speculative.

It has been asserted that the injunction unfairly

restricts the Smiths, who were not parties to the transfer restriction agreement. The Smiths, however, are also not parties to this action, and are not named in the preliminary injunction. Thus the injunction places no restrictions on them as individual shareholders, although as directors and officers of VCC they are subject to restrictions placed on the corporation. At argument, counsel for Lundgren stipulated that the preliminary injunction does not preclude the Smiths from selling their VCC stock.

Because appellants have failed to show any irreparable harm from the injunction, we also reject the claim that the superior court should have required a larger bond from Lundgren. We conclude the court did not abuse its discretion in issuing the preliminary injunction.

Our affirmation of the injunction should not be taken by Ms. Lundgren or her attorney as a sign that the courts will tolerate any unnecessary delay in resolution of the underlying dispute. The restrictions on VCC's operations which we have approved could constitute unfair burdens were they to continue overlong. It is incumbent on Lundgren to expeditiously seek permanent relief in a form which will finally resolve the dispute. The preliminary injunction, moreover, must be employed only to preserve the essential status quo while that final resolution is reached. It must not be used as a tool of obstruction to extract unfair advantage from other parties.

TDS and the other parties opposing Lundgren's efforts

also bear an obligation to proceed in good faith to a final resolution of the dispute. They should not be permitted to use their superior financial resources to seek a victory by attrition. Nor should they seek to convince the courts that they have been unfairly restricted by continually raising new and insubstantial complaints about the injunction. To the extent that further delay results from their own unreasonable obstructionism, in whatever forum, their pleas to be freed from interference in the operation of VCC are likely to fall on deaf ears.

The order for preliminary injunction is affirmed.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of September, 1994, served the foregoing REPLY TO OPPOSITION TO MOTION TO ENLARGE ISSUES upon Administrative Law Judge Joseph P. Gonzalez and upon all parties of record by hand delivery or by mailing a true copy thereof, first class postage prepaid, to all such parties or their attorneys, as shown on the following list:

Honorable Joseph P. Gonzalez*
Administrative Law Judge
FEDERAL COMMUNICATIONS COMMISSION
2000 L Street, N.W., Room 221
Mail Stop 0900
Washington, D.C. 20554

Joseph Paul Weber, Esquire*
Sally J. Novak, Esquire
Common Carrier Bureau
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, N.W., Room 644
Mail Stop 1600D1
Washington, D.C. 20554

L. Andrew Tollin, Esquire
Pierre J. LaForce, Esquire
Luisa L. Lancetti, Esquire
Robert G. Kirk, Esquire
WILKINSON, BARKER, KNAUER & QUINN
1735 New York Avenue, N.W., Suite 600
Washington, D.C. 20006

Alan Y. Naftalin, Esquire
Herbert D. Miller, Jr., Esquire
KOTEEN & NAFTALIN
1150 Connecticut Avenue, N.W., Suite 1000
Washington, D.C. 20036

R. Clark Wadlow, Esquire
Mark D. Schneider, Esquire
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20036

* Hand Delivery

Michael B. Barr, Esquire
Robert W. Hawkins, Esquire
HUNTON & WILLIAMS
2000 Pennsylvania Avenue, N.W., Suite 9000
Washington, D.C. 20006

Douglas B. McFadden, Esquire
Donald J. Evans, Esquire
R. Bradley Koerner, Esquire
McFADDEN, EVANS & SILL
1627 Eye Street, N.W., Suite 810
Washington, D.C. 20006

Howard J. Symons, Esquire
James A. Kirkland, Esquire
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004

Nathaniel F. Emmons, Esquire
Howard A. Topel, Esquire
Andrew H. Weissman, Esquire
MULLIN, RHYNE, EMMONS & TOPEL, P.C.
1225 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036-2604

William H. Crispin, Esquire
Dean R. Brenner, Esquire
VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND, CHARTERED
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005



Kenneth E. Hardman